

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**CORR WIRELESS  
COMMUNICATIONS, L.L.C.,  
CELLULAR SOUTH, INC., and  
CELLULAR SOUTH LICENSES, LLC**

**PLAINTIFFS**

**v.**

**CIVIL ACTION NO. 3:12-cv-036-SA-SAA**

**AT&T, INC., AT&T MOBILITY LLC,  
MOTOROLA SOLUTIONS, INC.,  
MOTOROLA MOBILITY, INC.,  
QUALCOMM INCORPORATED, and  
JOHN DOES 1-10**

**DEFENDANTS**

**DEFENDANTS MOTOROLA MOBILITY, INC.'S AND  
MOTOROLA SOLUTIONS, INC.'S REBUTTAL IN SUPPORT OF  
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

**COME NOW** Defendants Motorola Mobility, Inc. and Motorola Solutions, Inc., (collectively, “Motorola”), and submit this Rebuttal in Support of Motorola’s Motion to Dismiss Plaintiffs’ Complaint [Doc. No. 70]. As explained in Motorola’s Memorandum Brief supporting Motorola’s Motion to Dismiss [Doc. No. 71], and declaration and exhibits [Doc. No. 70], as well Motorola’s Rebuttal Memorandum Brief, and declarations and exhibits, submitted herewith, dismissal is warranted because the Complaint<sup>1</sup> does not satisfy the pleading requirements set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

In support of this Rebuttal, Motorola relies on the accompanying Memorandum Brief; the supporting Declaration of Chahira Solh (the “Solh Declaration”); Defendant AT&T

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<sup>1</sup> Pursuant to the Court’s June 22, 2012 Order [Doc. No. 85], this Rebuttal uses the term “Complaint” to refer not only to the original Complaint, but also to the First Amended and Supplemental Complaint [Doc. No. 75].

Mobility LLC's Rebuttal Memorandum of Law, and all other documents submitted in support thereof, as incorporated by reference hereby; Defendant Qualcomm Incorporated's Rebuttal Memorandum of Law, and all other documents submitted in support thereof, as incorporated by reference hereby; the pleadings, records, and papers already on file in this action and those filed herein; and such other matters and oral argument as may be presented at the hearing on Motorola's Motion to Dismiss.

Motorola hereby requests that the Court take judicial notice of the documents described below and attached to Exhibit 1 to this Rebuttal, the Solh Declaration. Motorola makes this request pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited in its Rebuttal Memorandum Brief. On a motion to dismiss for failure to state a claim upon which relief can be granted, a court is permitted to consider certain types of documents of which it may take judicial notice. The document must be one "not subject to reasonable dispute" in that it is generally known or capable of determination by resort to an unimpeachable source. Fed. R. Evid. 201(b). Rule 201(d) provides that the court "shall take judicial notice if requested by a party," as long as the court is "supplied with the necessary information" to show that the matter is subject to judicial notice. Rule 201(f) provides that judicial notice may be taken at any stage of the proceedings. Each of the documents listed below satisfies the criteria for judicial notice as well as for consideration on a 12(b)(6) motion:<sup>2</sup>

1. **Exhibit A:** Ericsson, Our Businesses.
2. **Exhibit B:** Sony to Acquire Ericsson's Share of Sony Ericsson.
3. **Exhibit C:** On the Introduction of Band 15.
4. **Exhibit D:** TS36.101: Lower 700 MHz Band 15.

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<sup>2</sup> The subject documents are authenticated by the Solh Declaration, attached hereto as Exhibit 1.

5. **Exhibit E:** Comments of Motorola, Inc. filed on March 31, 2010 in *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, RM Docket No. 11-592 (Fed. Commc'ns Comm'n).

6. **Exhibit F:** Comments of Research In Motion Corporation filed on June 1, 2012 in *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69 (Fed. Commc'ns Comm'n).

7. **Exhibit G:** Change Request entitled BS RF Requirements for Band 17.

8. **Exhibit H:** Notice of Proposed Rulemaking issued on March 21, 2012 in *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69 (Fed. Commc'ns Comm'n).

9. **Exhibit I:** Comments of Motorola Mobility, Inc. filed on June 1, 2012 in *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69 (Fed. Commc'ns Comm'n).

10. **Exhibit J:** Report of the 3GPP TSG RAN WG4 Meeting No. 47 Bis.

Dated: June 27, 2012

Respectfully submitted,

s/ Jim M. Greenlee

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**CERTIFICATE OF SERVICE**

I, JIM M. GREENLEE, of the firm of HOLCOMB, DUNBAR, WATTS, BEST, MASTERS & GOLMON, do hereby certify, that on **June 27, 2012**, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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Dated this, the 27th day of June, 2012

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